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TAGS: [KTIP](#) [ELAB](#) [KCRM](#) [KPAO](#) [KWMN](#) [PGOV](#) [PHUM](#) [PREL](#) [SMIG](#) [KE](#)  
SUBJECT: KENYA -- 2009 TIP REPORT: PRESS GUIDANCE AND  
DEMARCHE

REF: A. (A) STATE 59732  
[1](#)B. (B) STATE 005577

[1](#)1. This is an action cable; see paras 5 through 7 and 10.

[1](#)2. On June 16, 2009, at 10:00 a.m. EDT, the Secretary will release the 2009 Trafficking in Persons (TIP) Report at a press conference in the Department's press briefing room. This release will receive substantial coverage in domestic and foreign news outlets. Until the time of the Secretary's June 16 press conference, any public release of the Report or country narratives contained therein is prohibited.

[1](#)3. The Department is hereby providing Post with advance press guidance to be used on June 16 or thereafter. Also provided is demarche language to be used in informing the Government of Kenya of its tier ranking and the TIP Report's imminent release. The text of the TIP Report country narrative is provided, both for use in informing the Government of Kenya and in any local media release by Post's public affairs section on June 16 or thereafter. Drawing on information provided below in paras 8 and 9, Post may provide the host government with the text of the TIP Report narrative no earlier than 1200 noon local time Monday June 15 for WHA, AF, EUR, and NEA countries and OOB local time Tuesday June 16 for SCA and EAP posts. Please note, however, that any public release of the Report's information should not/precede the Secretary's release at 10:00 am EDT on June 16.

[1](#)4. The entire TIP Report will be available on-line at [www.state.gov/g/tip](http://www.state.gov/g/tip) shortly after the Secretary's June 16 release. Hard copies of the Report will be pouched to posts in all countries appearing on the Report. The Secretary's statement at the June 16 press event, and the statement of and fielding of media questions by G/TIP's Director and Senior Advisor to the Secretary, Ambassador-at-Large Luis CdeBaca, will be available on the Department's website shortly after the June 16 event. Ambassador de Baca will also hold a general briefing for officials of foreign embassies in Washington DC on June 17 at 3:30 EDT.

[1](#)5. Action Request: No earlier than 12 noon local time on Monday June 15 for WHA, AF, EUR, and NEA posts and OOB local time on Tuesday June 16 for SCA and EAP posts, please inform the appropriate official in the Government of Kenya of the June 16 release of the 2009 TIP Report, drawing on the points in para 9 (at Post's discretion) and including the text of the country narrative provided in para 8. For countries where the State Department has lowered the tier ranking, it is particularly important to advise governments prior to the Report being released in Washington on June 16.

[1](#)6. Action Request continued: Please note that, for those countries which will not receive an "action plan" with specific recommendations for improvement, posts should draw host governments' attention to the areas for improvement identified in the 2009 Report, especially highlighted in the "Recommendations" section of the second paragraph of the narrative text. This engagement is important to establishing the framework in which the government's performance will be

judged for the 2010 Report. If posts have questions about which governments will receive an action plan, or how they may follow up on the recommendations in the 2009 Report, please contact G/TIP and the appropriate regional bureau.

¶7. Action Request continued: On June 16, please be prepared to answer media inquiries on the Report's release using the press guidance provided in para 11. If Post wishes, a local press statement may be released on or after 10:30 am EDT June 16, drawing on the press guidance and the text of the TIP Report's country narrative provided in para 8.

¶8. Begin Final Text of Kenya's country narrative in the 2009 TIP Report:

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KENYA (TIER 2)  
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Kenya is a source, transit, and destination country for men, women, and children trafficked for the purposes of forced labor and sexual exploitation. Kenyan children are trafficked within the country for domestic servitude, forced labor in agriculture (including on flower plantations), cattle herding, in bars, and for commercial sexual exploitation, including involvement in the coastal sex tourism industry. In 2008, internally displaced persons residing in camps as a result of post-election violence reportedly were trafficked within the country. Kenyan men, women, and children are trafficked to the Middle East, other East African nations, and Europe for domestic servitude, exploitation in massage parlors and brothels, and forced manual labor, including in the construction industry. Employment agencies facilitate and profit from the trafficking of Kenyan nationals to Middle Eastern nations, notably Saudi Arabia, the UAE, and Lebanon. Children are trafficked to Kenya from Burundi, Ethiopia, Rwanda, Somalia, Tanzania, and Uganda for forced labor and commercial sexual exploitation. Most trafficked girls are forced to work as barmaids, where they are vulnerable to sexual exploitation, or are forced directly into prostitution. Ethiopian and Somali refugees residing in camps and Nairobi's Eastleigh section are particularly vulnerable to trafficking. Chinese, Indian, and Pakistani women reportedly transit Nairobi en route to exploitation in Europe's commercial sex trade.

The Government of Kenya does not fully comply with the minimum standards for the elimination of trafficking; however, it is making significant efforts to do so. Post-election violence and the subsequent government reorganization delayed a number of anti-trafficking initiatives, such as the enactment of anti-trafficking legislation and the passage of a draft national action plan. While local-level law enforcement officials across the country continued to arrest and charge alleged traffickers throughout the year, prosecutions failed to progress and data on such cases was not compiled at the provincial or national level. In addition, the government did not allocate adequate resources dedicated to anti-trafficking measures during the reporting period.

Recommendations for Kenya: Pass, enact, and implement the draft comprehensive anti-trafficking law; provide additional awareness training to all levels of government, particularly law enforcement officials, on identifying and responding to trafficking crimes; increase efforts to prosecute trafficking offenses and convict and punish trafficking offenders; establish an official process for law enforcement officials to refer trafficking victims for assistance; and institute trafficking awareness training for diplomats posted overseas.

Prosecution  
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The government failed to punish acts of trafficking during the reporting period, though it demonstrated continued efforts to investigate trafficking offenses and charge alleged offenders. Kenya does not prohibit all forms of trafficking, though it criminalizes the trafficking of

children and adults for sexual exploitation through Sections 13 to 15 and 18 of the Sexual Offenses Act of 2006, which prescribes minimum sentences of from 10 to 15 years, imprisonment, penalties that are sufficiently stringent and commensurate with those for other grave crimes; however, the law is not widely used by prosecutors. The Employment Act of 2007 outlaws forced labor and contains additional statutes relevant to labor trafficking. In February 2009, the Parliament passed a motion to introduce the Counter Trafficking in Persons Bill, the first step toward enactment of comprehensive human trafficking legislation.

The Department of Public Prosecutions reported three ongoing investigations for trafficking-related offenses and no prosecutions during the reporting period; the department was unable to produce data on the number of charges related to trafficking filed during the year. Despite this inability to gather and disseminate information at the national level, district courts reportedly heard several trafficking cases during the reporting period. In June 2008, the Loitokitok District Court arraigned a Kenyan woman on charges of trafficking a 17-year old Ugandan girl to her home for domestic servitude and subjecting her to cruelty; further details on this case were unavailable. In October 2008, two women were charged in a Nairobi court with forcing two young girls into prostitution. In March 2009, 119 parents and guardians of 209 children were charged in an Eldoret court with abusing their children by removing them from school and forcing them to work as domestic servants. In addition, the government cooperated with the United Kingdom, Ireland, and INTERPOL in the investigation and prosecution of at least two transnational trafficking cases involving Kenyan children during the reporting period. Laws against forced labor were not well enforced, though in June 2008, the Ministry of Labor raided and shut down an unregistered recruitment agency that was illegally sending Kenyan migrant workers to Dubai. With the assistance of NGO lecturers, the Kenya Police Training College provided anti-trafficking and child protection training to police recruits during their training as cadets. Corruption among law enforcement authorities and other public officials continued to hamper efforts to bring traffickers to justice; anti-trafficking activists made credible claims that, in certain regions, corrupt police or border officials were complicit in human trafficking. The government made no efforts to investigate or prosecute officials suspected of involvement in or facilitation of trafficking during the reporting period.

#### Protection

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The Kenyan government sustained minimal but inadequate victim protection efforts throughout the year. The government lacked a formal referral process to transfer victims to NGOs for assistance and it maintained no record of the number of victims referred on an ad hoc basis to NGO service providers by government officials during the year. In 2008, the Ministry of Gender, Children, and Social Development hired an additional 160 Children's Officers ) officials charged with advocating for children's rights and obtaining services for children in need ) bringing the total number to 333. During the reporting period, several Children's Officers posted throughout the country participated in trafficking investigations and provided counseling and follow-up to child trafficking victims. In addition, Children's Officers served on the management committee of the Rescue Center, a shelter for sex trafficking victims in Mombasa, and provided case assessments and service referrals for sex trafficking victims. City Council Social Services Departments in Nairobi, Mombasa, and Kisumu operated shelters to rehabilitate street children vulnerable to forced labor and commercial sexual exploitation; the shelters did not maintain records identifying trafficking victims among children undergoing rehabilitation. The government encouraged Kenyan victims, assistance in the investigation and prosecution of trafficking crimes, and ensured that they were not inappropriately incarcerated or otherwise penalized for unlawful acts committed as a direct result of being trafficked. Police, however, reportedly arrested foreign

trafficking victims for being in Kenya without valid identity documents; in most cases, they pled guilty to immigration violations and were quickly deported. The government did not provide legal alternatives to the removal of victims to countries where they would face hardship or retribution.

## Prevention

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The Government of Kenya made modest progress in its efforts to prevent human trafficking by publicly highlighting the dangers of human trafficking during the reporting period. Increased awareness within the government at all levels, however, remained inadequate for fostering better cooperation with civil society and strengthening public education efforts. After the government's reorganization in April 2008, the newly created Ministry of Gender, Children, and Social Development became the lead agency in the government's anti-trafficking efforts. In May 2008, the ministry and an NGO launched a 24-hour toll-free hotline enabling citizens to report cases of child trafficking, labor, and abuse; the hotline is located in a government-owned building and staffed, in part, by three Children's Officers who facilitated rescues and made referrals to appropriate district officials. Government ministers and Kenya's First Lady highlighted the human trafficking issue in public engagements, including the government's celebration of the Day of the African Child in June. Individual labor officers, children's officers, social workers, chiefs, health officials, police, religious leaders, and NGOs identified and withdrew children from forced labor situations during the reporting period. In 2008, Coast Province's regions of Mombasa, South Coast, and Taita-Taveta formed anti-trafficking networks comprised of government officials and civil society representatives. There were no reports of the Kenyan government's efforts to provide anti-trafficking training for its troops before deployment on international peacekeeping missions.

19. Post may wish to deliver the following points, which offer technical and legal background on the TIP Report process, to the host government as a non-paper with the above TIP Report country narrative:

(begin non-paper)

-- The U.S. Congress, through its passage of the 2000 Trafficking Victims Protection Act, as amended (TVPA), requires the Secretary of State to submit an annual Report to Congress. The goal of this Report is to stimulate action and create partnerships around the world in the fight against modern-day slavery. The USG approach to combating human trafficking follows the TVPA and the standards set forth in the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime (commonly known as the "Palermo Protocol"). The TVPA and the Palermo Protocol recognize that this is a crime in which the victims, labor or services (including in the "sex industry") are obtained or maintained through force, fraud, or coercion, whether overt or through psychological manipulation. While much attention has focused on international flows, both the TVPA and the Palermo Protocol focus on the exploitation of the victim, and do not require a showing that the victim was moved.

-- Recent amendments to the TVPA removed the requirement that only countries with a "significant number" of trafficking victims be included in the Report. Beginning with the 2009 TIP Report, countries determined to be a country of origin, transit, or destination for victims of severe forms of trafficking are included in the Report and assigned to one of three tiers. Countries assessed as meeting the "minimum standards for the elimination of severe forms of trafficking" set forth in the TVPA are classified as Tier 1. Countries assessed as not fully complying with the minimum standards, but making significant efforts to meet those minimum standards are classified as Tier 2. Countries assessed as

neither complying with the minimum standards nor making significant efforts to do so are classified as Tier 3.

-- The TVPA also requires the Secretary of State to provide a "Special Watch List" to Congress later in the year. Anti-trafficking efforts of the countries on this list are to be evaluated again in an Interim Assessment that the Secretary of State must provide to Congress by February 1 of each year. Countries are included on the "Special Watch List" if they move up in "tier" rankings in the annual TIP Report -- from 3 to 2 or from 2 to 1 ) or if they have been placed on the Tier 2 Watch List.

-- Tier 2 Watch List consists of Tier 2 countries determined: (1) not to have made "increasing efforts" to combat human trafficking over the past year; (2) to be making significant efforts based on commitments of anti-trafficking reforms over the next year, or (3) to have a very significant number of trafficking victims or a significantly increasing victim population. As indicated in reftel B, the TVPRA of 2008 contains a provision requiring that a country that has been included on Tier 2 Watch List for two consecutive years after the date of enactment of the TVPRA of 2008 be ranked as Tier 3. Thus, any automatic downgrade to Tier 3 pursuant to this provision would take place, at the earliest, in the 2011 TIP Report (i.e., a country would have to be ranked Tier 2 Watch List in the 2009 and 2010 Reports before being subject to Tier 3 in the 2011 Report). The new law allows for a waiver of this provision for up to two additional years upon a determination by the President that the country has developed and devoted sufficient resources to a written plan to make significant efforts to bring itself into compliance with the minimum standards.

-- Countries classified as Tier 3 may be subject to statutory restrictions for the subsequent fiscal year on non-humanitarian and non-trade-related foreign assistance and, in some circumstances, withholding of funding for participation by government officials or employees in educational and cultural exchange programs. In addition, the President could instruct the U.S. executive directors to international financial institutions to oppose loans or other utilization of funds (other than for humanitarian, trade-related or certain types of development assistance) with respect to countries on Tier 3. Countries classified as Tier 3 that take strong action within 90 days of the Report's release to show significant efforts against trafficking in persons, and thereby warrant a reassessment of their Tier classification, would avoid such sanctions. Guidelines for such actions are in the DOS-crafted action plans to be shared by Posts with host governments.

-- The 2009 TIP Report, issuing as it does in the midst of the global financial crisis, highlights high levels of trafficking for forced labor in many parts of the world and systemic contributing factors to this phenomenon: fraudulent recruitment practices and excessive recruiting fees in workers, home countries; the lack of adequate labor protections in both sending and receiving countries; and the flawed design of some destination countries, "sponsorship systems" that do not give foreign workers adequate legal recourse when faced with conditions of forced labor. As the May 2009 ILO Global Report on Forced Labor concluded, forced labor victims suffer approximately \$20 billion in losses, and traffickers, profits are estimated at \$31 billion. The current global financial crisis threatens to increase the number of victims of forced labor and increase the associated "cost of coercion."

-- The text of the TVPA and amendments can be found on website [www.state.gov/g/tip](http://www.state.gov/g/tip).

-- On June 16, 2009, the Secretary of State will release the ninth annual TIP Report in a public event at the State Department. We are providing you an advance copy of your country's narrative in that report. Please keep this information embargoed until 10:00 am Washington DC time June 16. The State Department will also hold a general briefing



for officials of foreign embassies in Washington DC on June 17 at 3:30 EDT.

(end non-paper)

¶10. Posts should make sure that the relevant country narrative is readily available on or through the Mission's web page in English and appropriate local language(s) as soon as possible after the TIP Report is released. Funding for translation costs will be handled as it was for the Human Rights Report. Posts needing financial assistance for translation costs should contact their regional bureau's EX office.

¶11. The following is press guidance provided for Post to use with local media.

Q1: What progress has Kenya made in the last year?

A: The Department of Public Prosecutions reported three ongoing investigations for trafficking-related offenses. For example, in June 2008, the Loitokitok District Court arraigned a Kenyan woman on charges of trafficking a 17-year old Ugandan girl to her home for domestic servitude and subjecting her to cruelty. In addition, the government cooperated with the United Kingdom, Ireland, and Interpol in the investigation and prosecution of at least two transnational trafficking cases involving Kenyan children. The Ministry of Gender, Children, and Social Development and an NGO launched a 24-hour toll-free hotline for reporting cases of child trafficking, labor, and abuse that is staffed, in part, by three Children's Officers who facilitated rescues and made referrals to appropriate district officials. Three anti-trafficking networks were formed in Coast Province comprised of government officials and civil society representatives.

Q2: In what areas of anti-trafficking intervention is Kenya weak?

A: Post-election violence and the subsequent government reorganization delayed a number of anti-trafficking initiatives, such as the enactment of anti-trafficking legislation and the passage of a draft national action plan. While local-level law enforcement officials across the country continued to arrest and charge alleged traffickers throughout the year, prosecutions failed to progress and data on such cases was not compiled at the provincial or national level. Corruption among law enforcement authorities and other public officials continued to hamper efforts to bring traffickers to justice; anti-trafficking activists made credible claims that, in certain regions, corrupt police or border officials were complicit in human trafficking. The government made no efforts to investigate or prosecute officials suspected of involvement in or facilitation of trafficking during the reporting period. The Ministry of Labor's enforcement of laws against child labor and forced labor continued to be nominal. In addition, the government did not allocate specific resources for anti-trafficking measures during the reporting period.

Q3: What can Kenya do to improve its fight against trafficking in persons?

A: To advance its anti-trafficking efforts, the Kenyan government could: pass, enact, and implement the draft comprehensive anti-trafficking law; provide additional awareness training to all levels of government, particularly law enforcement officials, on identifying and responding to trafficking crimes; increase efforts to prosecute trafficking offenses and convict and punish trafficking offenders; establish an official process for law enforcement officials to refer trafficking victims for assistance; and institute trafficking awareness training for diplomats posted overseas.

¶12. The Department appreciates posts, assistance with the preceding action requests.

CLINTON